IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TAI KWAN CURETON, LEATRICE SHAW, ANDREA GARDNER, and ALEXANDER WESBY, individually and on behalf of all others similarly situated,	:	CIVIL ACTION
	:	NO. 97-131
Plaintiffs,	:	
v.	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	:	
Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J. May 12, 2000

Presently before the Court is the Plaintiffs' Motion for Reconsideration. For the reasons given below, the Motion is Denied.

I. BACKGROUND

This is a putative class action lawsuit brought by four African-American student-athletes (Tai Kwan Cureton, Leatrice Shaw, Andrea Gardner, and Alexander Wesby), alleging that they were unlawfully denied educational opportunities as freshmen through the operation of initial eligibility rules by the Defendant National Collegiate Athletic Association ("NCAA"). When the Complaint was originally filed on January 8, 1997, Plaintiffs claimed that that these

rules ("Proposition 16") utilized a minimum test score requirement that had an unjustified disparate impact on black student-athletes.

Almost two years later the Court granted Plaintiffs' Motion to add Plaintiffs Gardner and Wesby. The parties then filed cross-motions for summary judgment. On March 8, 1999, this Court held, as a matter of law, that the NCAA is subject to suit under Title VI and its implementing regulations, and that the NCAA's initial eligibility rule has an unjustified disparate impact against black student athletes (the "March, 1999 Decision). See Cureton v. NCAA, 37 F.Supp. 2d 687 (E.D. Pa. 1999). The NCAA was granted an order to stay the injunction placed by this Court upon the NCAA's enforcement of Proposition 16 as it appealed the Court's grant of summary judgment to Plaintiffs. This Court granted Plaintiffs' partial class certification in July, 1999. A panel of the Third Circuit reversed this Court regarding the NCAA's liability under Title VI. See Cureton v. NCAA, 198 F.3d 107 (3d. Cir. 1999). The Court of Appeals remanded the case to this Court by an Order dated February 25, 2000 that directed me to enter summary judgment in favor of the NCAA. The Plaintiffs' then asked the Court to alter summary judgment and allow the Plaintiffs to amend their Complaint to include a claim of intentional racial discrimination by the NCAA in its formulation and enforcement of Proposition 16. By an Order dated April 13, 2000, the Court denied this Motion. Plaintiffs now ask the Court to reconsider.

II. LEGAL STANDARD

The United States Court of Appeals for the Third Circuit has held that "[t]he purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. See Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir.1985). Where evidence is not newly discovered, a party may not submit that evidence in support of a

motion for reconsideration. DeLong Corp. v. Raymond International Inc., 622 F.2d 1135, 1139-40 (3d Cir.1980). "A motion for reconsideration should address only factual and legal matters that the Court may have overlooked.... It is improper on a motion for reconsideration to ask the Court to rethink what it had already thought through--rightly or wrongly." Glendon Energy Co. v. Borough of Glendon, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993).

III. DISCUSSION

The Plaintiffs have submitted a lengthy brief accompanied by a declaration from Mr. Dennis explaining their reasons for not attempting to amend the Complaint earlier. Unfortunately, as this information was available at the time Plaintiffs filed the Motion to Amend, it may not be considered by the Court. See Harsco, 779 F.2d at 909.

The Court's April decision denying Plaintiffs' Motion to Amend focused on the undue delay in attempting to amend, the prejudice amending at this late stage would cause defendants, and the futility of amending the Complaint to add a claim of purposeful discrimination. The Plaintiffs' current Motion does not lead the Court to any different conclusions. Plaintiffs provide some explanations for why they did not seek to amend earlier. However, after considering all the circumstances, their delay in amending was excessive. The Plaintiffs waited three years when they had sufficient information to amend the Complaint to include their new claim more than two years prior to filing their Motion to Amend. Allowing such an amendment would injure both judicial efficiency and the interest of all concerned in the finality of proceedings.

The Court also finds that allowing an amendment would be futile. As this Court has previously noted, the record has demonstrated no evidence of purposeful discrimination

against black student-athletes by the NCAA. The mere monitoring by the NCAA of the effects its rules have upon black student-athletes does not suggest that the organization improperly considered race either in the promulgation or continued enforcement of Proposition 16. The Plaintiffs are attempting to claim that the NCAA established a system to increase graduation rates for all athletes by purposefully discriminating against black athletes. However, the record shows that Proposition 16 was aimed at raising graduation rates for all student-athletes. The policy treated all student-athletes the same. Even if it increased the number of black student athletes who graduated, thereby decreasing the black-white graduation gap (something the NCAA considers beneficial), there is not a hint of discrimination since the Policy treats all student-athletes similarly. The Plaintiffs are left with a neutral policy designed with laudable goals that happens to have a disparate impact on black student-athletes. Since the Third Circuit has already stated that redress can not be sought under a disparate impact claim, the Plaintiffs' amendment would be futile.

IV. CONCLUSION

The Court fails to find sufficient reason to reconsider its April 13 Order denying Plaintiffs' Motion to Amend the Complaint. Therefore, the Plaintiffs' Motion will be denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 12th day of May, 2000, upon consideration of Plaintiffs' Motion for Reconsideration (Docket No. 110), and the Defendant's Response thereto (Docket No. 111); it is hereby **ORDERED** that Plaintiffs' Motion is **DENIED.**

This case may be marked as **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.